

** NOT FOR PRINTED PUBLICATION **

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

PERSONAL AUDIO LLC,	§	
	§	
<i>Plaintiff,</i>	§	CIVIL ACTION No. 1:15-cv-350
	§	
v.	§	JUDGE RON CLARK
	§	
GOOGLE, INC.,	§	PRD
	§	
<i>Defendant.</i>	§	

ORDER RE: PENDING MOTION TO DISMISS

On January 27, 2017, Defendant Google, Inc. moved to dismiss Plaintiff Personal Audio LLC's claims in the original Complaint for failure to state a claim and improper venue. Dkt. # 32 ("Motion to Dismiss"). Within 21 days, on February 16, 2017, Personal Audio filed an Amended Complaint (Dkt. # 38), which substantially addresses many of the deficiencies raised by Google. The Amended Complaint supersedes the original Complaint and does not incorporate the original Complaint by reference, leaving the original Complaint with no legal effect. *See King v. Dogan*, 31 F.3d 344, 346 (5th Cir. 1994) (holding that an amended complaint supersedes a prior complaint and renders it of no legal effect unless the amended complaint specifically refers to and adopts or incorporates by reference the earlier pleading); *see also* 6 CHARLES ALAN WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, *Federal Practice & Procedure* § 1476 (3d ed. 2013) ("Once an amended pleading is interposed, the original pleading no longer performs any function in the case and any subsequent motion made by an opposing party should be directed at the amended pleading.").

Because the Amended Complaint supersedes the original Complaint, Google's Motion to Dismiss is moot. If Google wishes to re-urge its motion to dismiss, any subset of issues raised within it, or any new Rule 12(b) defenses, it must do so on or before **March 9, 2017**, which is 21 days from the date of service of the Amended Complaint.

IT IS THEREFORE ORDERED that Google's Motion to Dismiss (Dkt. # 32) is DENIED AS MOOT. Google shall respond to the Amended Complaint (Dkt. # 38) by filing a responsive pleading or a new Rule 12(b) motion on or before **March 9, 2017**.

So **ORDERED** and **SIGNED** this **21** day of **February, 2017**.

A handwritten signature in black ink, appearing to read "Ron Clark", is positioned above a horizontal line.

Ron Clark, United States District Judge